

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DAVID L EMMERT
Claimant

APPEAL NO. 07A-UI-09729-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRN STAFFING INC
Employer

**OC: 10-01-06 R: 04
Claimant: Respondent (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2007, reference 08, decision that allowed benefits. After due notice was issued, a hearing was held on October 31, 2007. The claimant did participate. The employer did participate through Kathleen Nicholson, Owner Shauna Yoder, Director of Services.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a CNA beginning December 21, 2006 through date of hearing.

When the claimant was hired he specifically told the employer that he had child care issues and would not be able to work anything but third shift during the week and second or third shift on the weekends. The employer hired the claimant knowing that he would not be available for any and all shifts due to his day care situation. When given short notice on shifts, the claimant was not able to arrange child care and thus could not accept some shifts. The employer knew when the claimant was hired that he would not be available to work all shifts because he did not have child care for his children. In late August 2007 the claimant made child care arrangements that now allow him to work both 2nd and 3rd shift positions. The claimant has been working full time since August 2007. The record establishes that the claimant only refused shifts when he was working another job, the shifts were outside his availability previously provided to the employer or he was unable to obtain child care on short notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant made the employer aware of his shift limitation when he was hired. The claimant has worked the shifts offered to him that were in accord with his limitations. The only reason the claimant has not accepted shifts was due to lack of timely notice for him to obtain child care or because the shifts conflicted with his day care limitations. An employee is not required to accept every shift offered by an employer in order to be determined able to and available for work. Since the claimant has been able to arrange other day care limitations he is now working additional shifts. The claimant was able to and available for work effective September 30, 2007. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 15, 2007, reference 08, decision is affirmed. The claimant is able to work and available for work effective September 30, 2007. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs